Fiduciary Series

Governance—a framework for sustaining fiduciary responsibility

Many consider effective plan governance essential to accurate and compliant plan management. But what is plan governance?

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Plan governance provides you with a framework to oversee and monitor your plan. This can help you maintain your plan's objectives, as well as manage your fiduciary and compliance obligations related to it. An effective retirement plan governance program incorporates processes for all duties and responsibilities involved with sponsoring and maintaining your plan, and helps reinforce and maintain established plan objectives.

Why documentation matters

Well-thought-out processes and procedures, supported by clear and accurate documentation, can help you make appropriate fiduciary decisions. Clear and accurate documentation offers a number of benefits.

- Demonstrates due diligence
- Serves as a permanent record
- Helps fiduciaries to know their roles and carry them out properly
- Provides evidence of following a prudent process in legal cases or examinations by the courts, DOL or Internal Revenue Service.

Proper plan governance can help avoid common fiduciary breaches. You can work with your provider or consultant to help you develop, implement and coordinate a thorough and comprehensive governance process. For additional help with the governance process, you can also consult with your legal counsel.

Here are some steps you can take to help put in place a solid governance plan and avoid falling short of your fiduciary responsibilities.

#1: Select plan fiduciaries

Establish appropriate plan committees to provide fiduciary oversight and keep plan fiduciaries on track with their responsibilities relative to investments, fees and administrative duties. It's also important to document the committee selection process.

Committee members should:

- Have the expertise needed to act as a fiduciary in the capacity for which they are chosen
- Fully understand their responsibilities (be sure to define and communicate their roles)
- Be willing to make the commitment to and be actively engaged in their roles

Prudent selection and training can minimize risk

You should follow a thoughtful, prudent and clear process when identifying, selecting and training your plan fiduciaries, as well as when evaluating or even replacing them. You also want your decisions to be consistent with your plan document or other policies and procedures.

When selecting fiduciaries, make sure they have the appropriate expertise and commitment to their responsibilities.

#2: Delegate fiduciary functions appropriately

A fiduciary designation makes someone a fiduciary. Also, performing an activity is the determining factor for who is and isn't considered a plan fiduciary. That's why being aware of their responsibilities and the potential risks for noncompliance is just as important for those who perform fiduciary functions as for those who are named fiduciaries. As you identify plan fiduciaries, consider reporting structures carefully and be sure your fiduciaries understand who has which responsibilities so that they can properly perform their fiduciary duties.

Fiduciaries can be liable for the actions of their co-fiduciaries if they knowingly participate in or conceal a breach or, if knowing of a breach, don't take appropriate actions to correct it.

One aspect of delegating fiduciary functions is to make sure that the individuals you delegate these responsibilities to are fully aware of their status as fiduciaries, acknowledge their role and recognize the potential liability for not meeting these duties. Once again, clear processes, accurate documentation and regular training are very important.

With respect to process, your plan can allocate fiduciary roles under ERISA. Most commonly, administrative and investment responsibilities are delegated separately. In addition, you should consider documenting your allocation procedures in either your plan or a separate governance document.

Done properly, clear delegation of fiduciary functions will result in fiduciaries understanding their roles so that any potential liability will be limited to the performance of those roles.

#3: Prudently rely on experts

It's common practice for plan sponsors to use the services of outside experts to help fulfill their fiduciary responsibilities. To satisfy duties under ERISA, a plan fiduciary should consider hiring an expert if the fiduciary lacks the expertise needed to fulfill his or her responsibilities.

ERISA permits fiduciaries to prudently rely on expert opinions ("blind" reliance is not permitted). Remember, selecting service providers is a fiduciary act, requiring prudent selection and ongoing monitoring.

A fiduciary should exercise prudence by examining the advice provided. This would include, for example, examining whether the expert's assumptions are reasonable. The plan fiduciary should also take the time to understand the expert's advice and determine whether or not it makes sense to follow it.

Finally, given that many plan sponsors do hire third parties for professional support and expertise, it is important to clearly define roles and prudently oversee the services of third-party administrators, consultants, vendors and recordkeepers.

#4: Maintain fidelity bonds and fiduciary liability insurance

With certain exceptions, ERISA requires all fiduciaries and anyone else who handles plan assets to be bonded (fidelity bond) in order to protect the plan and its participants against loss from fraud or dishonesty. This bond must be at least 10% of the amount of funds handled by the fiduciary up to a maximum bond amount of $500,000 or $1,000,000 for plans with employer securities.

Fiduciary liability insurance is an optional protection and is intended to cover for losses arising from a breach of fiduciary duty. If you are interested in such coverage, you may want to talk to your insurance provider.

Keep your plan governance updated

Proper governance sets a framework for fulfilling fiduciary responsibilities effectively. It dictates who is responsible, holds them accountable and, when necessary, helps protect them in the event of fiduciary mistakes. As you consider your plan's governance, remember it is a dynamic process—one that you may need to update periodically to reflect organizational changes and/or regulatory developments.

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